

EVALUATION FACTORS

An Overview for Agency Personnel

BACKGROUND: Continuing changes to the FAR affect the rules and regulations regarding the evaluation and documentation of proposals under the source selection process. This paper provides guidance for Purchasing Agents and Contract Specialists when making Best Value award decisions.

REFERENCES: FAR Subpart 15.304(d)
10 U.S.C. 2305(b)(1)
41 U.S.C. 253b(d)(3)

INTRODUCTION: Evaluation factors and sub-factors are resources used when attempting to make an award based on the best value to the Government, as opposed to the lowest price. It is fundamental that offerors be advised of the basis upon which their proposals will be evaluated and, once the solicitation is released, that agencies adhere to the stated criteria. Documented protests provide evidence of the importance of evaluation criteria as it relates to adherence to the criteria, pricing factors, and documentation to ensure that all offerors are treated equally.

GUIDANCE: The Competition in Contracting Act requires that a solicitation for competitive proposals state all significant factors that will be considered in the evaluation of proposals and ultimate award decision, and that agencies evaluate proposals based solely on the factors included in the solicitation. The criteria must be clear and concise, and the evaluation rationale must be consistent to the solicitation's stated evaluation scheme. An agency must not announce one basis for evaluation and award in the RFP or RFQ and then evaluate responses and make award on a different basis.

Although agencies are required to identify all major evaluation factors in a solicitation, offerors are not precluded from providing information above and beyond the stated evaluation criteria. However, unless the solicitation called for awarding extra evaluation credit for exceeding the stated requirements, the agency is not obligated to credit additional evaluation points for doing so.

Evaluation Factors and Simplified Acquisition Procedures (SAP)

Evaluation factors are utilized under SAP in accordance with FAR 13.003(g)(2), which says that procurement officials may use any appropriate combination of the procedures in FAR Parts 12, 13, 14, and 15 when using simplified acquisition procedures for acquisitions not expected to exceed \$5 million for commercial items.

However, be careful when doing that. The Comptroller General has held that if you use FAR Part 15-type procedures to conduct a simplified acquisition, and ask for written proposals, it will treat a protest as if you had used FAR Part 15 procedures, instead of FAR Part 13 procedures. See, for example, the Comptroller General's decision in the matter of *Finlen Complex, Inc.*, B-288280, October 10, 2001. That case involved a simplified acquisition for a commercial item (services) under FAR Subpart 13.5 in which the agency used FAR Part 15-type procedures, including a request for written technical proposals. When an unsuccessful offeror filed a protest, the agency tried to defend itself by invoking one of the rules for simplified acquisitions. The Comptroller applied the rules in FAR Part 15 instead, and sustained the protest.¹

If the SAP in accordance with FAR Subpart 13.5 are used, it is important to keep the procurement as simple as possible.

Would you like to review bid protest decisions for yourself? Look for recent bid protests at: <http://www.gaol.gov/decisions/bidpro/bidpro.htm> or to search historical records, when you have the actual decision number, try: <http://www.gpoaccess.gov/multidb.html> (need to scroll down to the GAO Comptroller General Decisions).

Technical Evaluation Documentation

Where an agency fails to document or retain evaluation materials, it bears the risk that there will be inadequate supporting rationale in the record for the evaluation and source selection decision, and the agency's basis for the decision cannot be concluded.²

A panel of at least three should identify the strengths and weaknesses of each proposal. Documentation of the strengths and weaknesses are of particular importance, since it will demonstrate to the contractor, if required, particular aspects of their proposal that defined how they were scored/evaluated. Sufficient documentation will also allow review of the merits of a protest. Additionally, if the Government reserves its right to make an award to an offeror that is significantly superior from a technical

¹ Vern Edwards, Moderator, Wifcon Forum, posted on 6/4/04, www.wifcon.com

² Kathpal Techs, Inc.: Computer & Hi-Tech Mgmt., Inc., B-283137.3 et al., Dec. 30, 1999, 2000, CPD P: 6 at 12.

standpoint as to warrant payment of a premium for such superiority, there must be significant documentation to support that decision.

Technical Evaluation Minimum Contents

Technical evaluation documentation shall, at a minimum, include a Source Selection/Technical and Cost Evaluation Memo, or equivalent, that contains the basis for the scoring of the proposals; the technical scores and pricing for the proposals in the competitive range; the strengths and weaknesses of the proposals in the competitive range and the basis for the award decision.

Scoring must also be consistent with any narrative accompaniment. Any strengths or weaknesses addressed must be consistent with the applicable scoring.

When tradeoffs are performed (see FAR Subpart [15.101-1](#)), the source selection records shall include: (i) an assessment of each offeror's ability to accomplish the technical requirements; and (ii) a summary, matrix, or quantitative ranking, along with appropriate supporting narrative, of each technical proposal using the evaluation factors.

Price/Cost Evaluation Factor Requirement

Cost or price to the Government must be considered in every Government procurement. This requirement means that an agency may not include a proposal in the competitive range without taking into account the relative cost of that proposal to the Government, nor may they exclude a proposal that is comparable to those in the competitive range without first taking into account the relative cost.³

In a negotiated procurement, the Government is not required to award to the lowest priced offeror, but they must state the relevant importance of price in the evaluation criteria. If price will be the award determinative factor, the criteria should indicate as such.

EVALUATIONS UNDER THE FSS

In accordance with FAR Subpart 8.404(a), agencies are not required to conduct a competition outside the Federal Supply Schedule (FSS) before using their business judgment in determining whether ordering supplies or services from an FSS vendor represents the best value to the Government and meets the agency's needs at the lowest overall cost. However, before placing an order, an ordering activity shall survey the GSA Advantage!

³ Columbia Research Corp., B- 284157, Feb. 28, 2000, 2000 CPD para. ____; Kathpal Techs., Inc.; Computer & Hi-Tech Management, Inc., *supra*.

on-line shopping service, or review the catalogs or pricelists of **at least three** schedule contractors in accordance with FAR Part 8.405.

Agencies are also not required to develop formal evaluation plans or scoring schemes for task orders in accordance with FAR 8.4 and are free to make award on a low price technically acceptable or a best value basis. However, if evaluation factors are utilized, rules under FAR Part 15 governing such factors will apply.

Please note, when buying services under FSS, you must consider the level of effort (number of hours) and the mix of labor proposed to perform the task to make a determination that the price is fair and reasonable.

TIPS:

For informational purposes, here are a few helpful hints and highlights to ensure the efficiency of your evaluation and documentation under the source selection process:

- Clearly state in the solicitation and source selection plan all the evaluation factors and subfactors that you will consider in making the source selection and their relative importance.
- Structure evaluation factors and subfactors and their relative order of importance to clearly reflect the Government's need and facilitate preparation of proposals that best satisfy that need.
- Limit evaluation factors and subfactors to those areas that will reveal substantial differences or risk levels among competing offers.
- Cost/pricing are always included as evaluation factors, but remember, cost/price is not scored in the evaluation of proposals.
- The caliber of a contractor's performance on previous contracts shall be included as an evaluation factor in competitively negotiated acquisitions unless the Contracting Officer documents why it would not be appropriate.
- Too many factors and subfactors can lead to a leveling of ratings, in which the final result may be a number of closely rated offers with little discrimination among competitors. It is not the number of evaluation factors that is critical, but having the right factors.
- The ultimate award decision will come down to justifying whether or not the difference in scores of the technical factors, (nonprice) are worth the difference in price.